

## EXHIBIT B

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

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THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	CERTIFIED TRANSCRIPT
Plaintiff,	)	
vs.	)	
	)	SACR-19-00061-JVS
MICHAEL JOHN AVENATTI,	)	
Defendant.	)	TRIAL DAY 26
-----	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

August 24, 2021

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09:25 1 SANTA ANA, CALIFORNIA; TUESDAY, AUGUST 24, 2021; 8:05 A.M.

09:25 2 (Jury not present)

08:05 3 THE CLERK: Item 1, SACR-19-00061-JVS, United

08:05 4 States of America versus Michael John Avenatti.

08:05 5 MR. SAGEL: Good morning, Your Honor. Brett Sagel

08:05 6 and Alexander Wyman on behalf of the United States and the

08:05 7 Prosecution Team. And at counsel table is Patrick

08:05 8 Fitzgerald with the Privilege Review Team of the United

08:05 9 States.

08:05 10 THE COURT: Good morning.

08:05 11 MR. AVENATTI: Good morning, Your Honor. Michael

08:05 12 Avenatti, present with Mr. Steward and Ms. Cummings-Cefali.

08:06 13 THE COURT: Good morning.

08:06 14 I received last night Mr. Avenatti's status

08:06 15 report, Re: Search of Service for Financial Data at Docket

08:06 16 No. 775.

08:06 17 Any further supplement on the findings yesterday?

08:06 18 MR. FITZGERALD: Yes, Your Honor. I would like to

08:06 19 provide further information to the Court and counsel on

08:06 20 three issues: one, a small what I believe point of

08:06 21 clarification to the defense status report; two, memorialize

08:06 22 certain agreements that the Prosecution Review Team and the

08:06 23 defense reached yesterday; and, third --

08:06 24 THE COURT: The Privilege Review Team.

08:06 25 MR. FITZGERALD: Excuse me. Thank you, Your

08:06 1 Honor, the Privilege Review Team. And third, provide a  
08:06 2 brief supplement for events that happened yesterday after  
08:06 3 the conclusion of the meeting with the defense at our  
08:07 4 office.

08:07 5 First, as far as the clarifications go -- and once  
08:07 6 I'm finished, I'll invite the defense to respond.

08:07 7 On lines 4 through 6 on page 2, there is a  
08:07 8 reference to the number of Tabs files and QuickBooks files.  
08:07 9 My understanding is that at the moment we are not able to  
08:07 10 determine which of these files relate to the clients at  
08:07 11 issue in this case and which relate to all the other clients  
08:07 12 in the case. It may be that we will need the license and  
08:07 13 the software from the vendor to be able to do that.

08:07 14 The second clarification is on lines 12 through 14  
08:08 15 about the discovery that we and the defense made at about  
08:08 16 6:00 p.m. I believe this refers to the assessment that we  
08:08 17 made that there is probably information on the virtual  
08:08 18 system that was not captured by the forensic searches that  
08:08 19 Mr. Varani made for us yesterday.

08:08 20 Then in regard to the agreements of the parties,  
08:08 21 first, the Privilege Review Team allowed the defense to take  
08:08 22 iPhone photographs of certain screens on their review of the  
08:08 23 virtual system, and we're trying to get screenshots. They  
08:08 24 said that they would provide those to the Privilege Review  
08:08 25 Team.

08:08 1 Second, all of this information that was produced  
08:09 2 yesterday the parties agreed would be produced pursuant to a  
08:09 3 modified Protective Order, which I would like to memorialize  
08:09 4 now.

08:09 5 It is largely based on the applicable Protective  
08:09 6 Order in this case, Document No. 74, that was filed on  
08:09 7 December 31st, 2019, with certain changes.

08:09 8 First, in paragraph three, all of the material  
08:09 9 that was produced yesterday will be deemed sensitive  
08:09 10 information as that is defined in paragraph three.

08:09 11 Second, the permission in paragraph eight that  
08:09 12 defendant and his counsel may provide this information in  
08:09 13 other matters relating to Mr. Avenatti is stricken. The  
08:09 14 information that was provided by the Privilege Review Team  
08:10 15 over the weekend and then yesterday is for use only in this  
08:10 16 case and not for any other criminal, bankruptcy, or civil  
08:10 17 proceeding absent further permission from the Court.

08:10 18 And then finally there is a new provision. The  
08:10 19 defense and the government agreed that in accessing this  
08:10 20 material, the defense and anyone working on behalf of the  
08:10 21 defense would in no way review or look at or attempt to  
08:10 22 access any information relating to the clients that were  
08:10 23 listed in the search warrant, which I believe is in  
08:10 24 paragraph 17, which I will just say collectively is the  
08:10 25 Clifford litigation, clients which they should not be

08:11 1 accessing which is set out in paragraph 17 of the search  
08:11 2 warrant that was filed on March 25th, 2019.

08:11 3 And then finally as a supplement to what happened  
08:11 4 last night after the defense finished reviewing the virtual  
08:11 5 system, which is in a conference room in the United States  
08:11 6 Attorney's Office, the case agent for the Prosecution Team  
08:11 7 was given access to it under my supervision.

08:11 8 He looked at an overall list of clients to  
08:11 9 determine which of the clients were applicable to this case.  
08:11 10 Then he clicked on the information for those clients and,  
08:11 11 after exploring the software, he found material that he  
08:11 12 believed was relevant to the Court's inquiry.

08:11 13 He was allowed to put that on a hard drive and  
08:12 14 have it exported from the virtual system. And my  
08:12 15 understanding is that that material then was sent to the  
08:12 16 Prosecution Team, and it has been produced to the defense.

08:12 17 THE COURT: Thank you.

08:12 18 Mr. Avenatti.

08:12 19 MR. AVENATTI: Your Honor, a couple points. The  
08:12 20 defense agrees with the modifications to the Protective  
08:12 21 Order relating to this information as Mr. Fitzgerald stated  
08:12 22 them in their entirety. So I wanted to put that on the  
08:12 23 record.

08:12 24 THE COURT: Well, let's follow up when a formal  
08:12 25 document gets filed.

08:12 1 MR. AVENATTI: Agreed, Your Honor.

08:12 2 As it related to lines 4 through 6 of the status  
08:12 3 report, the number of files that were listed, each of those  
08:12 4 Tabs files, Your Honor "relates" to the clients in this  
08:13 5 case, because when the files were produced, they were not  
08:13 6 produced by client. All of the Tabs data and files on the  
08:13 7 server were produced. By their very nature, they include  
08:13 8 information relating to the clients in this case. So these  
08:13 9 file numbers are correct because each Tabs file, electronic  
08:13 10 file, will have some relevance to the clients in this case.  
08:13 11 They are not client specific.

08:13 12 We are still in the process -- we got an enormous  
08:13 13 amount of data, six gigabytes. It's going to take us a  
08:13 14 while to go through this.

08:13 15 Number two, Your Honor, at lines 12 through 14, as  
08:13 16 to this discovery at 6:00 p.m., I want the Court to  
08:13 17 understand exactly what happened. Mr. Varani sent over six  
08:13 18 gigabytes of data from Washington, D.C. While I was in the  
08:13 19 offices of the U.S. Attorney's Office in L.A., I said to  
08:14 20 Mr. Tashchyan is there a way for us to confirm that  
08:14 21 everything that is on this virtual machine is included  
08:14 22 within Mr. Varani's files that he just sent over?

08:14 23 We then began a process by which we attempted to  
08:14 24 do that. It became apparent to Mr. Tashchyan and us that  
08:14 25 all of the data files on the virtual machine were not



08:14 1 included in what Mr. Varani sent over, and it's unclear that  
08:14 2 those data files were actually accessible on the virtual  
08:14 3 machine for a technical reason.

08:14 4 Rather than -- well, actually it was impossible at  
08:14 5 that time because of -- in the interest of time to do a full  
08:14 6 comparison of the two data sets. It was agreed that that  
08:14 7 would be done depending on what happens today, this morning,  
08:14 8 and at a later date. That still needs to be done. But  
08:14 9 there's no question that we don't have data files that were  
08:15 10 on the virtual machine that are not within Mr. Varani's data  
08:15 11 set.

08:15 12 I'm aware of the production of the government late  
08:15 13 last night of various reports relating to these clients.  
08:15 14 I'm going to reserve comment to later as it relates to what  
08:15 15 those reports show and don't show, and I will leave it at  
08:15 16 that.

08:15 17 THE COURT: Okay.

08:15 18 MR. AVENATTI: We are in the process of -- due to  
08:15 19 a computer malfunction, we weren't able to look at any of  
08:15 20 this data until 4:00 last night at the IRS Office due to a  
08:15 21 computer malfunction on their end. But needless to say,  
08:15 22 it's a lot of information, and there's a lot of different  
08:15 23 reports that are available now that we have access to the  
08:15 24 actual data and the software. There's audit reports.  
08:15 25 There's entry reports. There's a bunch of information that

08:15 1 we now have that we did not have from the cold hard page.

08:16 2 THE COURT: I believe the parties have done what I  
08:16 3 requested yesterday. You've provided me with a sampling of  
08:16 4 what's in the collection of documents held by the Privilege  
08:16 5 Review Team. I think that sufficiently informs me to rule  
08:16 6 on Mr. Avenatti's motion at 706.

08:16 7 I don't think I need an exhaustive presentation of  
08:16 8 exactly what's there. I think I have enough information to  
08:16 9 intelligently rule on 706.

08:16 10 With that said, Mr. Avenatti, would you like to be  
08:16 11 heard?

08:16 12 MR. AVENATTI: I would, Your Honor. Can I use the  
08:16 13 podium?

08:16 14 THE COURT: Sure.

08:16 15 MR. AVENATTI: Your Honor, there has obviously  
08:16 16 been a fair amount of briefing on this issue and a fair  
08:16 17 amount of exhibits. I'm not going to rehash the entire  
08:17 18 timeline of what has gone on over this odyssey of the last  
08:17 19 two-plus years, but I do want to bring the Court's attention  
08:17 20 to a few important what I would call guideposts.

08:17 21 Number one, on March 25th, 2019, a search warrant  
08:17 22 was executed at Ms. Regnier's home. According to her trial  
08:17 23 testimony, she claims that she "probably" told Special Agent  
08:17 24 Karlous and AUSA Sagel at that interview on that date about  
08:17 25 Tabs.

08:17 1 The Indictment in this case was issued in April of  
08:17 2 2019. In May of 2019 after I retained Mr. Steward as  
08:17 3 counsel, he requested all Rule 16 and Brady information. He  
08:17 4 specifically identified the servers as a location where such  
08:17 5 information could be found. That's Exhibits A and B to our  
08:18 6 reply on the pending motion at Docket 745.

08:18 7 Assistant U.S. Attorney Julian Andre responded to  
08:18 8 those requests on May 24th, 2019, and here is what he said  
08:18 9 in particular, Your Honor. And it's Exhibit C to our reply  
08:18 10 at 745. I've provided a copy for the benefit of the Court.  
08:18 11 There should be a packet there.

08:18 12 THE COURT: Okay. Thank you.

08:18 13 MR. AVENATTI: It should be the first document,  
08:18 14 May 24th, 2019. And here is what he said under EA LLP  
08:18 15 server: "In connection with the government's investigation,  
08:18 16 the Court-appointed Receiver for EA LLP consented to IRS-CI  
08:18 17 creating a forensic image of the six digital devices that  
08:19 18 comprise the EA LLP server, which were being stored by  
08:19 19 MixinIT, a company in Orange County that stored and managed  
08:19 20 computer servers. After creating a forensic image of the EA  
08:19 21 LLP server, the EA LLP server was returned to the EA  
08:19 22 Receiver. The government has since obtained a warrant to  
08:19 23 search the forensic copy of the EA LLP server for relevant  
08:19 24 evidence. We will produce any relevant evidence seized from  
08:19 25 the EA LLP server once the government completes the review

08:19 1 protocols set forth in the search warrant."

08:19 2 That was the representation made by Mr. Andre on  
08:19 3 May 24th, 2019, very early on in this case, well over two  
08:20 4 years ago.

08:20 5 When he mentioned these forensic images, these are  
08:20 6 the forensic images that Mr. Varani testified to during the  
08:20 7 trial as having been in the possession of the Department of  
08:20 8 Justice computer lab in Washington, D.C. These are the same  
08:20 9 forensic images that Mr. Varani searched yesterday for the  
08:20 10 first time for the Tabs data and produced it yesterday  
08:20 11 through the Privilege Review Team to the defense. Those are  
08:20 12 the exact same forensic images.

08:20 13 Following this representation by Mr. Andre, the  
08:20 14 defense continued to demand copies of the servers and all  
08:20 15 Brady information in the case to no avail.

08:20 16 On July 25th, 2019, an interview was conducted of  
08:20 17 Ms. Regnier.

08:21 18 THE COURT: Your Exhibit 1084.

08:21 19 MR. AVENATTI: 1084. Correct, Your Honor. The  
08:21 20 four most senior individuals from the Prosecution Team were  
08:21 21 present for this interview -- Special Agent Karlous, Special  
08:21 22 Agent Kim, and both Assistant U.S. Attorneys, Mr. Sagel and  
08:21 23 Mr. Andre.

08:21 24 The entire purpose of this call according to the  
08:21 25 memorandum was to ask questions regarding the Eagan

08:21 1 Avenatti, LLP, server and how client files are created and  
08:21 2 maintained on the server. During this call, Your Honor,  
08:21 3 Ms. Regnier informed all four members of Tabs, not once but  
08:22 4 twice. Most importantly, she informed them that the client  
08:22 5 billing and client accounting was handled through Tabs,  
08:22 6 quote, "Tabs would be used." That was July 25th, 2019.

08:22 7 A month later -- and this timing is important. A  
08:22 8 month after that interview Your Honor denied our motion to  
08:22 9 compel a copy of the servers. You only did so after you had  
08:22 10 been provided repeated assurances by the government that  
08:22 11 they were going to comply with Brady.

08:22 12 In fact, Your Honor's order specifically states:  
08:22 13 "The government has acknowledged its obligation to produce  
08:23 14 all documents within the scope of the search warrants, as  
08:23 15 well as its Brady and Giglio obligations."

08:23 16 As of that date that Your Honor made that  
08:23 17 statement and as of the date of the representations made by  
08:23 18 the Assistant U.S. Attorneys, they were well aware of the  
08:23 19 existence and importance of the Tabs data. Despite that, it  
08:23 20 was not produced. Nothing was done to look for it.

08:23 21 On November 19, 2019, Special Agent Roberson,  
08:24 22 Special Agent Karlous, and Assistant U.S. Attorney Sagel had  
08:24 23 another interview lasting over eight hours with Ms. Regnier.

08:24 24 THE COURT: For the record, that's your  
08:24 25 Exhibit 1085.

08:24 1 MR. AVENATTI: Correct, Your Honor, 1085.

08:24 2 Paragraph 14 reflects that each of those gentlemen  
08:24 3 were advised that there were two systems that were used to  
08:24 4 track expenses, QuickBooks and Tabs. The data was still not  
08:24 5 produced to the defense, and there does not appear to have  
08:24 6 been any effort whatsoever made to produce it.

08:25 7 Your Honor, to be clear, the Tabs data could only  
08:25 8 be exculpatory. It could never be inculpatory. It could  
08:25 9 never increase the amount of money that was owed to the  
08:25 10 client. It could only decrease the amount of money that was  
08:25 11 owed to each of the clients by its very nature because it  
08:25 12 did not track income or revenue. It only tracked case  
08:25 13 client expenses.

08:25 14 I would submit, Your Honor, that is why the  
08:25 15 government never made an effort to produce it or to provide  
08:25 16 it, because by its very nature it was exculpatory.

08:25 17 THE COURT: Well, there could have been other  
08:25 18 reasons why it was exculpatory, but certainly it could be  
08:26 19 exculpatory on that basis.

08:26 20 MR. AVENATTI: It could be exculpatory on that  
08:26 21 basis. It could be exculpatory on Giglio. It could be  
08:26 22 exculpatory based on who was working on the case and who had  
08:26 23 costs on the case. I mean, there's a myriad of reasons why  
08:26 24 or how it could be exculpatory. I agree.

08:26 25 Meanwhile, Your Honor, time and time again we

08:26 1 complained that all Brady and Giglio information had not  
08:26 2 been produced. And time and time again we were told that  
08:26 3 all of it had been produced. I'm not going to go through  
08:26 4 each and every time we have put it in the papers, but the  
08:26 5 representations were made to us and this Court repeatedly  
08:26 6 that all Brady and Giglio information had been produced.

08:26 7 In fact, I think on one call, a conference that we  
08:26 8 had sometime in 2020, Mr. Sagel made the representation  
08:26 9 there was no Brady. There was no exculpatory information in  
08:27 10 the entire case, something that I found to be rather  
08:27 11 remarkable in light of how much discovery had already been  
08:27 12 produced in the case.

08:27 13 But in any event, after the passage of the Due  
08:27 14 Process Protection Act, we moved for an order before this  
08:27 15 Court, and we asked the Court to issue an order directing  
08:27 16 the government to produce all information required under the  
08:27 17 DPPA.

08:27 18 On January 25th, this Court issued an order at  
08:27 19 Docket 408, and this order directed the government to  
08:27 20 produce to the defendant in a timely manner all information  
08:28 21 or evidence known to the government that is either, one,  
08:28 22 relevant to the defendant's guilt or punishment; or, two,  
08:28 23 favorable to the defendant on the issue of guilt or  
08:28 24 punishment. The order went on to talk about the  
08:28 25 consequences for noncompliance.

08:28 1 In the event there was any question in the  
08:28 2 government's mind as to whether the Tabs data and all  
08:28 3 QuickBooks data needed to be produced, this order made it  
08:28 4 clear as to what had to be produced, crystal clear. No Tabs  
08:28 5 data was produced following this order.

08:29 6 The defense subsequently moved for contempt. One  
08:29 7 of the items that the defense claimed had not been produced  
08:29 8 in response to the order was all financial data relating to  
08:29 9 the expenses of the clients. The government claimed  
08:29 10 everything had been produced and that we didn't know what we  
08:29 11 were talking about. I'm paraphrasing.

08:29 12 We continued to complain that we were missing  
08:29 13 information, including up through the beginning of the  
08:29 14 trial. I believe our status report immediately -- final  
08:29 15 status report referenced our concerns in this regard.

08:29 16 Then in the middle of trial, it was established  
08:30 17 through cross-examination that the Tabs data was an integral  
08:30 18 part of proving what was owed to the client. And it's  
08:30 19 important to recognize in my view, Your Honor, how this came  
08:30 20 about.

08:30 21 The government admitted Exhibits 48 and 174.  
08:30 22 Exhibit 48 is the cost listing for Johnson, and 174 is the  
08:30 23 cost listing for Barela, at least interim statements.

08:30 24 THE COURT: Draft statements.

08:30 25 MR. AVENATTI: Draft statements. Correct, Your



08:30 1 Honor.

08:30 2 The defense did not admit those. The defense did  
08:30 3 not seek to use them. It was the government that  
08:30 4 interjected this issue of the costs and expenses first into  
08:30 5 the case.

08:30 6 THE COURT: Well, whether they did it or not,  
08:30 7 weren't you entitled to bring that up either in  
08:31 8 cross-examination or in your case-in-chief if you decided to  
08:31 9 put one on?

08:31 10 MR. AVENATTI: Absolutely, Your Honor, we would  
08:31 11 have been entitled to do that, and we would have been  
08:31 12 entitled to use the data. The only point that I make is  
08:31 13 that it was the government that first went down this road of  
08:31 14 putting this cost and expense data before the jury. So  
08:31 15 there can be little question at this point that the  
08:31 16 government considered it relevant and material. That's why  
08:31 17 they used it.

08:31 18 Now, they then proceeded to use 48 and 174 with a  
08:31 19 number of witnesses. And we attached it as Exhibit A to our  
08:31 20 filing last night. I think there's five or maybe six  
08:31 21 witnesses at minimum that they used these two exhibits with,  
08:31 22 including Special Agent Karlous, Ms. Regnier, Mr. Barela,  
08:31 23 Mr. Johnson, Mr. Arden. I think that may be all five. I'm  
08:31 24 not certain.

08:31 25 We again demanded the production of the data on

08:32 1 August 12th at the latest. Nothing happened for eight days,  
08:32 2 literally nothing. The government made no effort to find  
08:32 3 out if this data existed and, if so, where it was or how it  
08:32 4 could be produced to the defense.

08:32 5 It was not until last Friday when the Court issued  
08:32 6 its directive -- its clear directive -- that we started to  
08:32 7 get traction and actually get the data produced. It was  
08:32 8 finally produced to the defense yesterday as outlined in the  
08:32 9 status report.

08:32 10 We explained to the Court the very limited review  
08:32 11 that we have been able to do in the last I guess it's 16  
08:32 12 hours or so. That review continues. There is a lot of  
08:32 13 information to go through, a lot of Tabs information to go  
08:32 14 through and a lot of QuickBooks information to go through.

08:33 15 We cited the Court to the Bundy case from the  
08:33 16 Ninth Circuit. I'm sure Your Honor has read the case. For  
08:33 17 the court reporter, it's at 968 F.3d 1019 (Ninth Circuit  
08:33 18 2020).

08:33 19 There are many parallels, Your Honor, between this  
08:33 20 case and the Bundy case. But what the Ninth Circuit made  
08:33 21 clear in Bundy is the materiality standard is a  
08:33 22 post-conviction appellate standard. Now, even under that  
08:33 23 standard, I think this information qualifies easily. But in  
08:33 24 any event, we don't have to meet that standard. The  
08:33 25 question is was this information relevant? It most

08:34 1 certainly was. And the question is was it favorable? It  
08:34 2 most certainly was.

08:34 3 Bundy makes clear -- and I will cite Olson and  
08:34 4 Price as well, two other Ninth Circuit cases -- that indeed  
08:34 5 even if information is not favorable, if it would cause the  
08:34 6 defense to change the trial strategy or to use a different  
08:34 7 strategy or to abandon a strategy even, that it is required  
08:34 8 to be produced pursuant to Rule 16 and Brady and Giglio.

08:34 9 There is no question, Your Honor, this data should  
08:34 10 have been produced pursuant to Brady and Giglio. The  
08:34 11 prejudice is substantial as outlined in our report of last  
08:34 12 night.

08:34 13 THE COURT: I think you have very credibly  
08:34 14 outlined what use you could have made of that information.

08:35 15 MR. AVENATTI: Then at this point I will not go  
08:35 16 further except to say, Your Honor, we still don't know the  
08:35 17 full extent of the prejudice because we haven't been able to  
08:35 18 review all of the data.

08:35 19 There is little question, Your Honor, we cannot  
08:35 20 proceed with this trial as it stands. We need time to  
08:35 21 review this data. It changes the entire approach of the  
08:35 22 case from the defense perspective. We would have to recall  
08:35 23 at least five, if not seven, witnesses. The government's  
08:35 24 expert would have to be struck.

08:35 25 Again, I'm not going to get into how prejudicial

08:35 1 this has been. It is beyond substantial.

08:35 2 THE COURT: You're not suggesting that this trial  
08:35 3 could proceed in some fashion?

08:35 4 MR. AVENATTI: No, Your Honor, I do not believe  
08:36 5 that it is possible for this trial to proceed in this  
08:36 6 fashion for many, many reasons.

08:36 7 This information should have been produced two  
08:36 8 years ago. It was not. There are exhibits now in the case  
08:36 9 that are demonstrably false. There are opinions that have  
08:36 10 been put before the jury that are false, that are not  
08:36 11 accurate, namely, because the government never had the  
08:36 12 expert look at any of the Tabs data.

08:36 13 The expert, despite claiming to be an expert,  
08:36 14 never asked for the actual Tabs data, never asked for the  
08:36 15 cost information, which is frankly shocking.

08:36 16 For each of these reasons, Your Honor, I believe  
08:36 17 that the motion for relief requested in the motion at 706  
08:36 18 should be granted.

08:37 19 Now, Brady speaks of the fact that whether the  
08:37 20 government acted in good faith or bad faith is really not a  
08:37 21 consideration when the Court decides motions such as 706.  
08:37 22 I'm not going to spend time casting aspersions on the  
08:37 23 government, et cetera, because I don't think it's  
08:37 24 relevant --

08:37 25 THE COURT: I agree.

08:37 1 MR. AVENATTI: -- frankly. What I will say is  
08:37 2 this. This was not an isolated, one-time failure. This was  
08:37 3 not one oversight that occurred in the heat of trial or in  
08:37 4 the heat of preparing for trial. There was a repeated  
08:37 5 failure to comply with basic constitutional requirements and  
08:37 6 the basic requirements of Bundy, Price, and Olson, and  
08:38 7 others by the government over a period of years.

08:38 8 THE COURT: Well, I want to focus on the Tabs. As  
08:38 9 you recall, you've made a number of motions for a mistrial  
08:38 10 with respect to allegedly missing documents. On a number of  
08:38 11 those, I found that the claim wasn't substantiated when the  
08:38 12 government made a full showing. So I prefer to concentrate  
08:38 13 on Tabs and QuickBooks.

08:38 14 MR. AVENATTI: Your Honor, I didn't mean to  
08:38 15 suggest otherwise. When I was speaking of a repeated  
08:38 16 failure, I'm speaking strictly in the context of Tabs and  
08:38 17 QuickBooks. I'm not dealing with the other issues that we  
08:38 18 have talked about, Jencks and things of that nature.

08:38 19 As to the interview notes that I placed before the  
08:38 20 Court, Your Honor is clearly familiar with them. You know  
08:38 21 them by exhibit numbers. They demonstrate how long this  
08:38 22 problem has gone on and the repeated failures of the  
08:39 23 government.

08:39 24 I think for all of those reasons, Your Honor, I  
08:39 25 would ask that the Court grant defendant's motion at 706.

08:39 1 Unless the Court has any further questions --

08:39 2 THE COURT: No. Thank you.

08:39 3 Mr. Sagel, wouldn't you agree that the financial  
08:39 4 data goes to the heart of this case?

08:39 5 MR. SAGEL: Partially, and I say that in the  
08:39 6 sense --

08:39 7 THE COURT: Well, if we look to the way you've  
08:39 8 summed up the case with Mr. Drum, if we go to Exhibits 430  
08:39 9 to 457, and 457 especially, he has analyzed the financial  
08:39 10 data available to him to establish the losses on the part of  
08:39 11 each of the client victims, and that's almost pure financial  
08:40 12 data.

08:40 13 MR. SAGEL: That's why I say partially. I will  
08:40 14 start with that in the sense of with three of the victims,  
08:40 15 while he analyzes and does charts showing what probably  
08:40 16 based on the finances should have been paid to them and what  
08:40 17 they're entitled to and so forth, part of the analysis is  
08:40 18 zero dollars of their settlement money goes to them, as well  
08:40 19 as \$4 million of Ms. Phan's money does not go to her.

08:40 20 And before anything ever happens with determining  
08:40 21 the costs, expenses, and so forth --

08:40 22 THE COURT: Are you suggesting I grant relief with  
08:40 23 respect to the claims of some victims but not as to others,  
08:40 24 for example, Ms. Phan?

08:40 25 MR. SAGEL: No, Your Honor. And I can go through

08:40 1 some of the finances, too, with regards to what in a short  
08:40 2 period of time we were able to find, which I don't believe  
08:40 3 substantiates the claims that were made both last night and  
08:41 4 today. I think there's other issues, too, that I would like  
08:41 5 to address. But when it comes to the finances of the costs  
08:41 6 and the expenses, it's to put in perspective to the jury  
08:41 7 what was going on, how the defendant was doing it, and that  
08:41 8 these people were entitled to money.

08:41 9 THE COURT: But if that perspective were incorrect  
08:41 10 because not all of the data was taken into account, wouldn't  
08:41 11 that potentially provide a basis to question everything  
08:41 12 Mr. Drum did, to question across the board the accuracy of  
08:41 13 the government's financial presentation?

08:41 14 MR. SAGEL: To question, yes, but I guess I would  
08:41 15 point to several things that --

08:41 16 THE COURT: Well, doesn't the defendant have a  
08:41 17 right to examination, to question the financial analysis  
08:41 18 made by the government?

08:41 19 MR. SAGEL: He does, Your Honor, but I think we  
08:41 20 are skipping several steps in that process, including what  
08:41 21 the finances even show. I would like to address that,  
08:41 22 because what he's saying in broadbrush wasn't available to  
08:42 23 him is not accurate.

08:42 24 From a very quick review of what was in Tabs for  
08:42 25 these clients as of the last reports, they support exactly

08:42 1 what Mr. Drum testified to. And even more so --

08:42 2 THE COURT: Support in a generalized fashion or  
08:42 3 support for the analysis he actually makes? If the costs  
08:42 4 that he calculated were incorrect --

08:42 5 MR. SAGEL: They were not. They were not, and I  
08:42 6 have it right here, Your Honor, and I can walk through each  
08:42 7 and every one of them.

08:42 8 THE COURT: I think the defendant was entitled,  
08:42 9 even if they are in fact correct -- if there is evidence out  
08:42 10 there that would have allowed the defendant to make a  
08:42 11 challenge under any theory, I think the defendant was  
08:42 12 entitled to have the data to do that, even if in some other  
08:42 13 fashion you can show prima facie that it was correct. In  
08:42 14 other words, I think he is entitled to make non-winning  
08:43 15 challenges as well as winning challenges. The point is he  
08:43 16 is entitled to that data to make the challenges.

08:43 17 MR. SAGEL: So let me go backwards to that first.  
08:43 18 The defendant on two occasions that he took advantage of --  
08:43 19 and on more occasions, as many as he wanted, had access to  
08:43 20 the virtual servers.

08:43 21 THE COURT: Sir, that doesn't convince me. It's  
08:43 22 the obligation of the government to produce Brady, Giglio,  
08:43 23 et cetera. He is entitled to sit back and wait for you to  
08:43 24 serve it up on a platter. Agreed?

08:43 25 MR. SAGEL: If it's in our possession, yes.



08:43 1 THE COURT: And for this discussion -- go ahead.

08:43 2 MR. SAGEL: That's the part when he talks about  
08:43 3 what Brady says or what he talks about Bundy says or Price  
08:43 4 or Olson, any of the cases, is that it skips past what's in  
08:44 5 our possession.

08:44 6 We cannot -- and I can focus on various different  
08:44 7 times in the case, including when he starts talking about  
08:44 8 August 12th to the present. We as the Prosecution Team do  
08:44 9 not have authority to go into the server that the search  
08:44 10 warrants -- we are beholden on what comes to us in the  
08:44 11 process, what's in our possession.

08:44 12 At the earliest time --

08:44 13 THE COURT: Well, I think you've made a good-faith  
08:44 14 showing that the Prosecution Team produced all of the Tabs  
08:44 15 data that it had at Docket No. 737 and the attachment. I  
08:44 16 believe you put before the Court and the defendant the  
08:44 17 totality of the Tabs data that the Prosecution Team had.

08:44 18 MR. SAGEL: Yes, Your Honor. And also to  
08:44 19 basically put before the Court and the defendant over -- if  
08:44 20 I'm doing my math right -- over a year ago of what was in  
08:45 21 our possession with regard to costs and expenses,  
08:45 22 including --

08:45 23 THE COURT: Your possession, meaning the  
08:45 24 Prosecution Team?

08:45 25 MR. SAGEL: The Prosecution Team's possession. If

08:45 1 there was a question that there was something was missing --  
08:45 2 this was even discussed at the specific hearing where Your  
08:45 3 Honor said if there is something specific, you file a Motion  
08:45 4 to Compel.

08:45 5 Without us having access to the databases  
08:45 6 themselves and without having access to the servers, we are  
08:45 7 in a position where this is what we have. We have provided  
08:45 8 everything we have. This is what we have seen. If there is  
08:45 9 something missing, there is a mechanism for the defendant to  
08:45 10 say this is pertinent information, and I need it.

08:45 11 THE COURT: Don't the events of the last 72 hours  
08:45 12 suggest that there was a mechanism to determine whether the  
08:45 13 Privilege Review Team in its capture of the subpoenaed  
08:45 14 documents had Tabs data?

08:46 15 MR. SAGEL: By whom?

08:46 16 THE COURT: By the Prosecution Team. What do you  
08:46 17 make of Mr. Andre's statement in his letter of May 4th,  
08:46 18 2019: "In connection with the government's investigation,  
08:46 19 the Court-appointed Receiver for EA LLP consented to IRS-CI  
08:46 20 creating a forensic image of the six digital devices that  
08:46 21 comprise the EA LLP server, which were being stored by  
08:46 22 MixinIT, a company in Orange County that stored and managed  
08:46 23 computer servers. After creating a forensic image of the EA  
08:46 24 LLP server, the EA LLP server was returned to the EA  
08:46 25 Receiver. The government has since obtained a warrant to

08:46 1 search the forensic copy of the EA LLP server for relevant  
08:46 2 evidence. We will produce any relevant evidence seized from  
08:46 3 the EA LLP server once the government completes the review  
08:46 4 protocols set forth in the search warrant."

08:47 5 It sounds like this is the same forensic copy I  
08:47 6 think we've been talking about here.

08:47 7 MR. SAGEL: Correct. So to respond to both that  
08:47 8 statement and --

08:47 9 THE COURT: It seems that Mr. Andre was  
08:47 10 acknowledging an obligation to go beyond what you had and to  
08:47 11 investigate this forensic copy.

08:47 12 MR. SAGEL: I don't know that I read it that way.  
08:47 13 "We will produce any relevant evidence seized once the  
08:47 14 government completes the review protocols set forth in the  
08:47 15 search warrant." The review protocols does it in a way  
08:47 16 where it provides it to him.

08:47 17 I would also point out, Your Honor, if you turn to  
08:47 18 the following page of this same section which discusses the  
08:48 19 Eagan Avenatti servers, the last paragraph says: "We would  
08:48 20 also be glad to discuss alternative procedures to ensure  
08:48 21 that you are able to access any information on the EA LLP  
08:48 22 server that you believe may be relevant to your client's  
08:48 23 defense, such as providing you and your client an  
08:48 24 opportunity to review the forensic image of the EA LLP  
08:48 25 server at the IRS-CI's Office."

08:48 1 THE COURT: Would access free you of your  
08:48 2 obligation under Brady to produce Brady material? Does  
08:48 3 access free you of your Brady obligation to produce Brady  
08:48 4 material?

08:48 5 MR. SAGEL: Under this circumstance, I have to  
08:48 6 believe yes. And the reason why is because if it's not in  
08:49 7 our possession, we -- I don't have -- I have a Brady  
08:49 8 obligation to material that I am in the possession of that I  
08:49 9 can provide. I'm not possessing --

08:49 10 THE COURT: Well, suppose for whatever reason the  
08:49 11 Taint Team, the Privilege Review Team, acting in absolute  
08:49 12 good faith just misses a substantial volume of relevant data  
08:49 13 that should have been passed over to the Prosecution Team.  
08:49 14 Don't the sins of one part of the government, meaning the  
08:49 15 Taint Team if my facts are accurate, fall upon the  
08:49 16 Prosecution Team in terms of the Brady obligation?

08:49 17 MR. SAGEL: If it did not exist at all, I would  
08:49 18 follow your analogy.

08:49 19 THE COURT: But hasn't it been established that  
08:49 20 there does exist relevant Tabs material and potentially  
08:49 21 QuickBooks materials that the Privilege Review Team had?

08:50 22 MR. SAGEL: I'm not sure I know the answer to that  
08:50 23 fully, but I don't believe that's correct.

08:50 24 THE COURT: Well, I believe the representations  
08:50 25 Mr. Avenatti has made from an initial review citing the

08:50 1 specific pieces of evidence undermine that position.

08:50 2 MR. SAGEL: Well, to the specific -- that's why I  
08:50 3 would like to get into some of the specific -- I'm not sure  
08:50 4 that there are specifics, and I have some examples of  
08:50 5 specifics that that does undermine.

08:50 6 May I proceed with that?

08:50 7 THE COURT: Please.

08:50 8 MR. SAGEL: With regards to Exhibit 48, Your  
08:50 9 Honor, defendant references that he believes -- we put this  
08:50 10 in through multiple witnesses, and it's demonstrably false.

08:50 11 Let me start with the fact that I think several of  
08:50 12 the witnesses -- we never were saying it was accurate. It  
08:50 13 was the costs that he utilized to withdraw checks in the  
08:51 14 same amount. Whether it was interim, whether it was -- this  
08:51 15 was what he was e-mailed and he utilized to withdraw money.

08:51 16 THE COURT: Well, if he used inaccurate input, at  
08:51 17 a minimum isn't he -- you're saying never mind whether it's  
08:51 18 accurate or not. This is what he relied upon. Fine. But  
08:51 19 at a minimum would he not be subject to cross-examination if  
08:51 20 it were shown that that data was inaccurate or outdated; or,  
08:51 21 alternatively, under an Daubert analysis, it wasn't  
08:51 22 reliable?

08:51 23 MR. SAGEL: You're talking about Mr. Drum now?

08:51 24 THE COURT: Right.

08:51 25 MR. SAGEL: Correct. Mr. Drum specifically said

08:51 1 and testified to that his analysis is based on the costs and  
08:51 2 expenses of the material up to February 5th after the  
08:51 3 settlement money came in based on all the records that were  
08:51 4 there at the time. He was cross-examined on whether or not  
08:52 5 he included -- everything that was included after that date.  
08:52 6 There was extensive cross-examination.

08:52 7 If you look -- and I can show you the Tabs reports  
08:52 8 that are the, quote/unquote "most current," which still show  
08:52 9 drafts where the defendant refers to what was done. They  
08:52 10 are all loan payments and payments to Mr. Johnson from four  
08:52 11 months and later after his settlement.

08:52 12 There are no costs and expenses to the case. They  
08:52 13 are payments for his living expenses, his \$1,900 payments to  
08:52 14 him, and FedEx expenses to send him his checks. There are  
08:52 15 no costs and expenses for the case.

08:52 16 And even the \$27,000 or \$37,000 he dropped in a  
08:52 17 footnote is even identified as basically the living expense  
08:52 18 or medical expense to his new living center. I would have  
08:52 19 to look it up, but it's seven months after the settlement  
08:53 20 when he moves into his new housing facility, Sunrise Living.  
08:53 21 These are not costs and expenses of the case. These are  
08:53 22 what he's paying Mr. Johnson after he lied to him.

08:53 23 There are no -- and I can provide Your Honor the  
08:53 24 Tabs data for Mr. Johnson. I can do it for Mr. Barela, and  
08:53 25 I can do it for Ms. Gardner. I would like to do that so

08:53 1 that Your Honor has the full --

08:53 2 THE COURT: Wait a wait. There is no Tabs data  
08:53 3 for Ms. Gardner in the record. You didn't offer any  
08:53 4 support --

08:53 5 MR. SAGEL: We didn't have it. I agree. And what  
08:53 6 I'm saying is what he's finding --

08:53 7 THE COURT: Well, isn't that even more egregious  
08:53 8 if it's out there --

08:53 9 MR. SAGEL: No, because --

08:53 10 THE COURT: Not if it's perhaps outdated or  
08:53 11 mistaken but no Tabs data? And there's no question there  
08:53 12 were costs for Ms. Gardner.

08:53 13 MR. SAGEL: We used QuickBooks for her, and we  
08:53 14 used e-mails from Filippo Marchino who said he paid all the  
08:53 15 expenses in the case. And the Tabs data support is even  
08:53 16 less than what we gave him credit for. But the expenses we  
08:53 17 gave him credit for under QuickBooks and Filippo Marchino or  
08:54 18 whatever are greater than what's in Tabs.

08:54 19 With Johnson, there is nothing. I can walk  
08:54 20 through each and every one of them. There is nothing after  
08:54 21 February 3rd or 4th, which was before 2015 that relates to  
08:54 22 the case. They are all payments to Mr. Johnson's for his  
08:54 23 living expenses, which are even itemized as such in his  
08:54 24 data.

08:54 25 The Tabs data for the years of 2012 or '11 or '10

08:54 1 or whatever the start date to February 4th, 2015, are  
08:54 2 identical. The only difference -- and when he talks about  
08:54 3 these new transactions, they are paying the loan payments  
08:54 4 and the living expenses for Mr. Johnson.

08:54 5 With regards to Mr. Barela, the only difference --  
08:54 6 and I can show you this, too, and I have them printed out --  
08:54 7 the only difference when you look at the two exhibits that  
08:54 8 the government introduced at trial, 174 and 193, 174 is the  
08:55 9 draft Barela bills as of 12/19/2017.

08:55 10 Exhibit 193 is Ms. Regnier's e-mail, which she  
08:55 11 says are the total costs of the Barela matter to take out a  
08:55 12 check for \$111,113.22. The updated Barela Tabs matches to  
08:55 13 the penny 193, \$111,113.22, exactly what Ms. Regnier  
08:55 14 testified to, that the reason for the difference was the  
08:55 15 costs that came through in those several weeks.

08:55 16 And the Tabs data supports exactly what was  
08:55 17 introduced at trial. There is nothing in this data that  
08:55 18 shows prejudice to the defendant. There is nothing in this  
08:55 19 data that shows anything different at this trial, especially  
08:56 20 as it relates to Mr. Drum and it relates Mr. Johnson. He  
08:56 21 even said (a) what his analysis was based on up through when  
08:56 22 the settlement comes because that's when the costs would be  
08:56 23 there.

08:56 24 He was cross-examined extensively as to whether or  
08:56 25 not there could have been costs after the case settled that



08:56 1 he didn't include. He said that's correct if it existed.

08:56 2 There is nothing to show it existed, Your Honor.

08:56 3 And we hear and we see broad statements about what  
08:56 4 this Tabs data is and how concerning they are and so forth.  
08:56 5 But the reason he did not show you the -- and I can provide  
08:56 6 them for the record -- is because they matched exactly what  
08:56 7 was presented at trial.

08:56 8 When it comes to Geoffrey Johnson, the new stuff  
08:56 9 doesn't change anything at trial. It actually supports  
08:56 10 what's already been introduced at trial.

08:56 11 Similarly, there was no Tabs data for Michelle  
08:57 12 Phan and Long Tran for the very reasons that the evidence at  
08:57 13 trial has also established.

08:57 14 THE COURT: That would delay their contracts a  
08:57 15 little bit.

08:57 16 MR. SAGEL: Correct. And the only other data in  
08:57 17 Tabs that he has referenced repeatedly and that he  
08:57 18 references how there are all these other transactions, some  
08:57 19 of his lawyers kept time sheets, but these weren't  
08:57 20 contingency cases. So the time sheets are irrelevant. And  
08:57 21 when you look at even some of the Tabs sheets, for example,  
08:57 22 with Mr. Barela, they will have John Arden's time and then  
08:57 23 how much he would charge if there was an hourly case. But  
08:57 24 then it's not there because it wasn't an hourly case. So  
08:57 25 they only used the expenses, costs, and so forth.

08:57 1 He references at least one client who he did other  
08:57 2 work for. You now have Tabs data to see the work that was  
08:57 3 done on the other case. That other case was this Cafe  
08:58 4 Perche case with Mr. Barela. It was nine and ten months  
08:58 5 after Barela's settlement money came in. So it's hard to  
08:58 6 see how that relates to why he didn't get his money nine and  
08:58 7 ten months earlier for \$944. So all these other costs were  
08:58 8 from another case which was ten months after he should have  
08:58 9 provided Mr. Barela his money, \$900.

08:58 10 The numbers and the Tabs records do not support  
08:58 11 what is being told to the Court. I fully appreciate what  
08:58 12 Your Honor is saying. I'm not doubting any of the concerns  
08:58 13 Your Honor has. And I will say to you that every time along  
08:58 14 the way --

08:58 15 THE COURT: So your position is my concerns are  
08:58 16 baseless?

08:58 17 MR. SAGEL: No, I'm not saying that, Your Honor.  
08:59 18 I am saying that with a review of what Your Honor has taken  
08:59 19 a very cautious approach to in allowing him to gain access  
08:59 20 to these reports -- with a review of those records, we can  
08:59 21 now see why he never asked for these things for two years,  
08:59 22 because they don't support any further costs and expenses on  
08:59 23 these cases, and they don't support any reduction.

08:59 24 And for the same reason that we put in the  
08:59 25 recommended jury instruction the dollar amounts, we don't

08:59 1 have to prove that for wire fraud. What we have to prove is  
08:59 2 that the defendant obtained money and property by false  
08:59 3 statements, representations, and material omissions. That  
09:00 4 happened in each and every one of these cases. Whether he  
09:00 5 was entitled at the end to \$1,810,000, \$1,910,000, or a  
09:00 6 number in between, he has had the data for that.

09:00 7 His request for Brady and which we've responded  
09:00 8 every time -- everything in our possession we've provided.  
09:00 9 If we are missing something, please let us know. We have  
09:00 10 even provided the example. If there was data, we would  
09:00 11 extract QuickBooks for him. He has had QuickBooks since  
09:00 12 2019.

09:00 13 If there was something from he thought from the  
09:00 14 electronic files were missing, he had two years to ask us  
09:00 15 what we didn't provide which he had access to. Again, what  
09:00 16 we don't know as we sit here is he was produced I think a  
09:00 17 million more files than we were, or whatever the number was,  
09:00 18 400,000. We will never know what's in that delta either.  
09:01 19 I'm not saying it exists, or I'm assuming not because it  
09:01 20 hasn't been said, but we don't have access to that. He has  
09:01 21 had access to this information, and everything that's in our  
09:01 22 possession has been provided.

09:01 23 To use just one example, to compare this to Bundy,  
09:01 24 which he did again here today -- in Bundy, these were  
09:01 25 videotapes that were in the government's possession at all

09:01 1 times, and they didn't turn it over. It's night and day to  
09:01 2 what we're talking about here.

09:01 3 The Tabs data -- all we have were the printout  
09:01 4 sheets that came through the process. We provided them to  
09:01 5 him and let him know this is what we have for costs and  
09:01 6 expenses, along with QuickBooks.

09:01 7 In March of 2020 when we did the expert disclosure  
09:01 8 on John Drum, this is what he's relying upon. These are the  
09:01 9 documents that we have that we provided that he is relying  
09:01 10 upon. As to all these things, the government has been  
09:02 11 extremely transparent of what we have, what we're using, and  
09:02 12 what we've provided, not just to the defendant but by June  
09:02 13 of 2020 to the Court.

09:02 14 At no point were we hiding anything that we didn't  
09:02 15 believe -- and as it relates to the Tabs data, which  
09:02 16 Ms. Regnier testified to, QuickBooks versus Tabs.  
09:02 17 QuickBooks was tied to the bank records when it was paid.  
09:02 18 Tabs was not.

09:02 19 **And you have seen that with regards to**  
09:02 20 **Mr. Johnson, they double counted a lot of things because**  
09:02 21 **they actually didn't pay. It was how they kept track of**  
09:02 22 **costs but didn't actually pay the costs.**

09:02 23 So there's an extra level of why he could also  
09:02 24 scrutinize these records, which maybe would not change  
09:02 25 anything because they aren't tied automatically to bank

09:02 1 records.

09:02 2 But that's I think tertiary of what was beyond the  
09:02 3 issue. I do believe -- one second, Your Honor.

09:03 4 (Government counsel conferring)

09:03 5 MR. SAGEL: I will take a cue from the Court, but  
09:03 6 I obviously have printouts with regards to Johnson, Barela,  
09:03 7 and Gardner. I would like to either provide them to the  
09:03 8 Court and go over it with Your Honor now or be afforded the  
09:03 9 opportunity to lodge it with the Court so that Your Honor  
09:03 10 can see what is there to make the relevant and proper  
09:04 11 inquiry to show the analysis that is needed under Brady, so  
09:04 12 that when making the Brady analysis or the Brady test for  
09:04 13 prejudice of what would be useful to the defendant, you  
09:04 14 would be able to see with this that nothing in this changes  
09:04 15 what did happen and what was provided to the defendant and  
09:04 16 what he could have used, whether it be cross-examination of  
09:04 17 Drum, whether it be for use with Ms. Regnier, which he did.

09:04 18 **He cross-examined her that you can't know all the**  
09:04 19 **right things unless you have both. He fully did that. He**  
09:04 20 **did that with several witnesses. He wants to call more for**  
09:04 21 **that very reason.**

09:04 22 When you really do the prejudice analysis under  
09:04 23 the Brady prong -- again, there are other parts to the  
09:05 24 equation that I would not agree have been established  
09:05 25 either. But when you look at these -- that's why I am

09:05 1 asking the Court if you want me to go over some of them in  
09:05 2 examples now or to lodge with the Court --

09:05 3 THE COURT: I don't think that's necessary. If  
09:05 4 you want to file anything in addition, that's fine. I  
09:05 5 believe it's my intention to hear Mr. Avenatti in rebuttal  
09:05 6 and rule.

09:05 7 MR. SAGEL: If I could just cover a couple of  
09:05 8 other things very quickly or give me one second to make  
09:05 9 sure.

09:05 10 (Pause in proceedings)

09:05 11 MR. SAGEL: Your Honor, I've obviously been before  
09:05 12 Your Honor for a long time, so I know that you are not  
09:05 13 sitting there without knowing what I'm going to say. But I  
09:05 14 feel the need for the record that I want to make a couple of  
09:05 15 comments.

09:05 16 With regards to Your Honor on two occasions  
09:06 17 denying the request for full access to the server -- and I  
09:06 18 think the representation was it was only because of the  
09:06 19 government's representation -- I don't think that accurately  
09:06 20 reflects what happened in both 2019 and 2020.

09:06 21 Obviously we represented that anything that was  
09:06 22 Brady or Giglio in our possession we would turn over, as we  
09:06 23 did. But the servers didn't belong to him. Your Honor gave  
09:06 24 him the -- mentioned on multiple occasions his availability  
09:06 25 and access to them, and he either at one point took no

09:06 1 advantage of it and the other time saying what he chose on  
09:06 2 his own to do. He still had the mechanism.

09:06 3 The comments about how Tabs could only be  
09:06 4 exculpatory, again, this is a statement that's made without  
09:06 5 referencing the Tabs because they are not exculpatory. If  
09:06 6 you want to say they could have been used and would have  
09:06 7 been used, fine. The best case scenario is at least to look  
09:07 8 for it, but they don't change the analysis, especially with  
09:07 9 regards to what the witnesses specifically testified to.

09:07 10 I'm going to conclude with two points, Your Honor.  
09:07 11 Our special agent was at the virtual server last night for I  
09:08 12 believe about two hours, maybe less. And through the  
09:08 13 virtual servers, he was able to find in there with no  
09:08 14 experience with Tabs any and all of the Barela items, the  
09:08 15 Johnson items, the Gardner items, and the lack thereof. It  
09:08 16 did not take very long at all to find each and every one of  
09:08 17 them specific to the client to be able to print out any and  
09:08 18 all of the related documents that show what they show.

09:08 19 It is not a voluminous, time-consuming process.  
09:08 20 And when we mention the 6,000 files or whatever the numbers  
09:08 21 are, that's the entirety of the law firm. That's not  
09:08 22 Johnson, Barela, Gardner, Phan, and Tran. It will not  
09:08 23 require a review of 6,000 client files to see what is  
09:09 24 relevant for the specific clients.

09:09 25 With regards to -- one second, Your Honor.

09:09 1 (Government counsel conferring)

09:09 2 MR. SAGEL: And then my final thought, comment,  
09:09 3 position, is he says what would be of value to him, what  
09:09 4 would be -- I think his comment was it was the government  
09:09 5 who interjected costs and expenses in this case. The  
09:10 6 government was the one who went down this road, and it's  
09:10 7 just now that he has to respond.

09:10 8 I will respond in this way, Your Honor, twofold.  
09:10 9 One, his opening statements were when he created the chart  
09:10 10 where he showed how you need to calculate the expenses. He  
09:10 11 has known from -- his defense position from minute one in  
09:10 12 his opening statement is this is what is necessary. This is  
09:10 13 what is necessary to calculate the expenses, the total  
09:10 14 costs, and so forth.

09:10 15 So this isn't anything new. He has always known  
09:10 16 what it is and what was going on. These exhibits and  
09:10 17 documents that have been in our possession have been  
09:10 18 provided to him well long before this. So he still has that  
09:10 19 opportunity. He's still in his defense case-in-chief to do  
09:10 20 what he needs to do to utilize these, to call back John Drum  
09:11 21 to continue his cross-examination, to continue to do  
09:11 22 whatever he needs to do.

09:11 23 If Your Honor believes a short recess is necessary  
09:11 24 for that, Your Honor can grant him that. But there is no  
09:11 25 reason why this jury who has heard the evidence for as long



09:11 1 as they have heard the evidence with regards to what has  
09:11 2 been on the table from the inception -- that anything other  
09:11 3 than a short recess is needed to provide him the opportunity  
09:11 4 to do whatever he needs to do if Your Honor even believes a  
09:11 5 short recess is necessary.

09:11 6 Your Honor would need to have found an actual  
09:11 7 violation I believe to get to some of the remedies he is  
09:11 8 asking for. I believe that the record does not show that at  
09:11 9 all including, as Your Honor has mentioned, whether or not,  
09:11 10 (a) it's in anybody's possession or anybody has acted in bad  
09:11 11 faith or --

09:11 12 THE COURT: Bad faith isn't necessary.

09:12 13 MR. SAGEL: It's not necessary --

09:12 14 THE COURT: And I'm not prepared on this record to  
09:12 15 find that you were inaccurate when you said that the  
09:12 16 Prosecution Team has been transparent. To the extent of its  
09:12 17 knowledge, I believe that's an accurate statement --  
09:12 18 accurate to the extent of its knowledge.

09:12 19 MR. SAGEL: I guess where I respond to Your Honor  
09:12 20 in that regard is when you look at the cases that are being  
09:12 21 cited and what the remedies are being sought both by the  
09:12 22 defendant or in the cases he references, they are --

09:12 23 THE COURT: I think I have your position. Thank  
09:12 24 you.

09:12 25 MR. SAGEL: Thank you, Your Honor.

09:12 1 THE COURT: Mr. Fitzgerald, do you want to say  
09:12 2 something?

09:12 3 MR. FITZGERALD: Yes, I do, Your Honor. The Court  
09:12 4 is going to rule. I need to have before it in the record  
09:12 5 certain very important facts from the Privilege Review side  
09:13 6 of the case.

09:13 7 The summary of that is to the extent that this  
09:13 8 Court believes this is a classic Brady case, to the extent  
09:13 9 that the Court believes that this case is controlled by  
09:13 10 Bundy, with all due respect, the Court is wrong. It is  
09:13 11 wrong on the facts, and it is wrong on the law.

09:13 12 Let me start with the facts because that informs  
09:13 13 why the Court is wrong on the law. The facts are --

09:13 14 MR. AVENATTI: Your Honor, I'm going to interpose  
09:13 15 an objection because it's the government who has just  
09:13 16 opposed the motion. If Mr. Fitzgerald is here, I don't  
09:13 17 understand the context of these statements. This does not  
09:13 18 sound like this is a factual discussion about what happened  
09:13 19 with the Privilege Review Team. Mr. Fitzgerald should not  
09:14 20 be advocating for either side under these circumstances.

09:14 21 THE COURT: I agree. Mr. Fitzgerald is here to  
09:14 22 bring the facts to the Court, not argue the law.

09:14 23 MR. FITZGERALD: Very well, Your Honor. I will  
09:14 24 forego the legal part of it, but there are other facts as  
09:14 25 opposed to just what has happened in the last 36 hours that

09:14 1 I think bear directly on the legal issues that are before  
09:14 2 the Court.

09:14 3 THE COURT: Please.

09:14 4 MR. FITZGERALD: Those are the Privilege Review  
09:14 5 Team really had two tasks. The one that we have talked  
09:14 6 about before -- for example, back in October with clawback  
09:14 7 documents was taking the material that was found and  
09:14 8 determining what the privilege consequences were and sending  
09:14 9 it to the Prosecution Team or sending it to the defense.

09:15 10 But the other part that has turned out really in  
09:15 11 the long-run I think to be more important and also more  
09:15 12 difficult from my perspective is that we ended up on the  
09:15 13 Privilege Review side being responsible for a major part of  
09:15 14 the investigation of the case post-Indictment, namely,  
09:15 15 making sure that the search warrants were conducted  
09:15 16 correctly.

09:15 17 So we were responsible -- putting the digital  
09:15 18 things aside, it would be as if we were then responsible to  
09:15 19 send agents out to a house to seize things that were allowed  
09:15 20 under the search warrant. And it turned out in retrospect  
09:15 21 that the things in the attic weren't seized. And once they  
09:16 22 weren't seized, then they are not part of the case.

09:16 23 I don't mean that to make a distinction between  
09:16 24 what the Prosecution Team knew and what I knew. Obviously  
09:16 25 for purposes of Brady, we can't rely on that distinction,

09:16 1 and we are not doing that. But we can rely on the  
09:16 2 distinction between things that were seized and things that  
09:16 3 were not seized. The things that were seized under the  
09:16 4 search warrant were the things that went through filters,  
09:16 5 went to the relativity database, were presented to a team of  
09:16 6 agents who worked very diligently and as hard as they could  
09:16 7 to fulfill the Court's reasonable request about when the  
09:16 8 case would be ready for trial.

09:17 9 And it was through those two processes, the  
09:17 10 initial filtering and then the seizure by those agents, that  
09:17 11 the case material, the things that for legal purposes were  
09:17 12 in the possession of the government, that was created.

09:17 13 Now, again, was that search perfect? I'm the  
09:17 14 first to admit now that we know about the Tabs data, no, it  
09:17 15 was not. But that is still a difference between having  
09:17 16 something that was in the government's possession and having  
09:17 17 something that was not in the government's possession.

09:17 18 I may be treading on legal issues, but I would  
09:17 19 respectfully submit based on this factual analysis there is  
09:17 20 a legal argument on whether this Tabs data earlier was  
09:17 21 something that had been, quote/unquote, "seized" and was  
09:18 22 something that was therefore part of the case.

09:18 23 Now, could we have seized it? Well, obviously  
09:18 24 yes, because we have been able to do that now. Should we  
09:18 25 have seized it and should any consequences of the Privilege

09:18 1 Review Team's inability to find that or know about it or  
09:18 2 seize it -- should that be held on behalf of the government?  
09:18 3 That respectfully without getting into the merits is a  
09:18 4 different argument than a pure Brady/Bundy argument.

09:18 5 In making that determination, the other fact that  
09:18 6 needs to be in the record is pursuant to the Court's concern  
09:18 7 in denying the defense full access to the servers in its  
09:18 8 August 2019 order, it did order the Privilege Review Team to  
09:18 9 make them available to the defense.

09:19 10 THE COURT: I believe that was voluntary on behalf  
09:19 11 of the government. I don't believe I ordered that. I  
09:19 12 thought that was a government offer to have them come in and  
09:19 13 sit down with the IRS rep.

09:19 14 MR. FITZGERALD: I wasn't here when that happened,  
09:19 15 but whether it was our suggestion as to a staff backlog that  
09:19 16 they got what they needed or whether it was at the direction  
09:19 17 or suggestion of the Court, certainly I thought we were  
09:19 18 acting under the authority of the Court in making that  
09:19 19 happen.

09:19 20 So in September 2019 and then in October 2019,  
09:19 21 defense counsel and the defendant came to the IRS Offices,  
09:19 22 and the same computer specialist who set up the system that  
09:19 23 now exists in our office and which both parties reviewed  
09:20 24 last night, a similar system, virtual system was set up in  
09:20 25 September and October. And based on those searches, certain

09:20 1 files were requested by the defense.

09:20 2 I went through and reviewed them. And based on  
09:20 3 the parameters of the search warrant -- because, again, this  
09:20 4 was something that was totally outside the search warrant.  
09:20 5 Obviously these weren't the protocols to let defense counsel  
09:20 6 and the defendant just grab things.

09:20 7 So once they made their requests, I sat down with  
09:20 8 my then colleague, and we determined that some of them were  
09:20 9 valid, and some of them we thought under the search warrant  
09:20 10 were not valid. There were six of those. So we told them  
09:20 11 no, and we told them why. And for all the others, we turned  
09:20 12 them over to the defense.

09:21 13 The first one on that list I now feel I can  
09:21 14 certainly say here in open court was a request for  
09:21 15 QuickBooks files, which we produced. And at that point  
09:21 16 after we produced it, we did not get another specific  
09:21 17 request from the defense.

09:21 18 So when the Court focuses on the issue of who knew  
09:21 19 what and who is responsible for the Tabs data not being  
09:21 20 available to the defense, it needs to take into account that  
09:21 21 it was the defendant and his counsel who had seen this  
09:21 22 virtual system which is now at issue. They've seen it  
09:21 23 twice.

09:21 24 The Prosecution Team has seen it zero. The  
09:21 25 Prosecution Team was not told about the files which were

09:22 1 produced to the defense two years ago. And I think both  
09:22 2 under the law and basic fairness that should really make a  
09:22 3 difference.

09:22 4 Thank you, Your Honor.

09:22 5 THE COURT: Let me ask you this. If all this new  
09:22 6 Tabs data and new QuickBooks data had come to light, if you  
09:22 7 were aware of that at the beginning, would you have reviewed  
09:22 8 those materials, made a determination whether anything in  
09:22 9 those newly identified materials were subject to the  
09:22 10 subpoena, and reviewed them and passed on what was  
09:22 11 appropriate to the Prosecution Team?

09:22 12 MR. FITZGERALD: Yes, Your Honor. A small  
09:22 13 correction. The Court said subpoena. Again, this was all  
09:22 14 through the search warrants.

09:22 15 THE COURT: Oh, search warrant. Yes, that's  
09:22 16 right.

09:22 17 MR. FITZGERALD: We understand, Your Honor.

09:22 18 THE COURT: But because those materials identified  
09:22 19 in the past few days weren't identified by the Privilege  
09:23 20 Review Team at the time, they have not yet been reviewed by  
09:23 21 the Privilege Review Team to determine whether they are  
09:23 22 material under the search warrant that was appropriate to  
09:23 23 produce and would have been passed on to the Prosecution  
09:23 24 Team.

09:23 25 MR. FITZGERALD: Yes, Your Honor. Of course, in

09:23 1 looking at something whether it would have been judged to be  
09:23 2 relevant to the case and fall under the terms of the search  
09:23 3 warrant, that of course can be sometimes a close issue or a  
09:23 4 judgment call. But here I can definitely say it is not a  
09:23 5 close issue. It is not a judgment call.

09:23 6 **If I had found out about the existence of the Tabs**  
09:23 7 **data through the defense request in September of 2019, it**  
09:23 8 **would certainly, like the QuickBooks data, have been**  
09:23 9 **included in what was produced. If any of the searching**  
09:23 10 **taint agents had seized it and then it had been reviewed by**  
09:23 11 **the Privilege Review Team, we would definitely have said**  
09:24 12 **that it (a) is not privileged; and (b) it is certainly**  
09:24 13 **relevant, and we would have passed it on to the Prosecution**  
09:24 14 **Team.**

09:24 15 Again, this is not an issue where we are quibbling  
09:24 16 about its relevance or the fact that reasonable prosecutors  
09:24 17 and defense attorneys would like to have this. It's just  
09:24 18 the fact that it was -- again, in retrospect, certain things  
09:24 19 that I would like to have had seized were not seized.

09:24 20 But going back to my earlier analogy where  
09:24 21 searching agents went to a house and didn't search the attic  
09:24 22 when one is talking about five terabytes of data, that is  
09:24 23 more similar to having a search warrant for a small town. I  
09:25 24 think it is fair when you have the former mayor of the town  
09:25 25 on the other side that you can get guidance as to where you



09:25 1 need to look.

09:25 2 Thank you, Your Honor.

09:25 3 THE COURT: Thank you. We are going to take about  
09:25 4 a ten-minute break here.

09:25 5 (Recess taken at 9:25 a.m.;  
09:25 6 proceedings resumed at 9:36 a.m.)

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09:35 23 MR. AVENATTI: Your Honor, can I approach, please?

09:36 24 THE COURT: Yes.

09:36 25 MR. AVENATTI: Your Honor, I would like to start

09:36 1 where Mr. Fitzgerald ended.

09:36 2 Mr. Fitzgerald claimed that this data was not  
09:36 3 seized. There is no question the data was seized. It was  
09:36 4 contained within the forensic images of the servers. In  
09:37 5 fact -- and I have handed the Court a copy of the search  
09:37 6 warrant application, which is Document 4-1 on 8:19-MJ-00418.  
09:37 7 This is the search warrant application for the ten devices,  
09:37 8 which included the Eagan Avenatti servers.

09:37 9 This is the application that the Assistant U.S.  
09:37 10 Attorneys prepared and which was supported by the affidavit  
09:37 11 of Special Agent Karlous back in the spring of 2019. This  
09:37 12 warrant which was ultimately issued provides in detail as to  
09:37 13 what was to be seized and searched and what the government  
09:38 14 was to look for.

09:38 15 In particular, it enumerates a number of  
09:38 16 categories of information that the government was to search.  
09:38 17 This is what the government asked to search for. This is  
09:38 18 what the government claimed in the application they needed  
09:38 19 for the prosecution of the case.

09:38 20 I will direct the Court's attention to  
09:38 21 paragraphs -- page 7 of 330 at the top, paragraph F:  
09:38 22 "Records, documents, programs, applications, or materials  
09:39 23 from January 2011 through March 25, 2019, relating to the  
09:39 24 accounting records for Avenatti or any of the subject  
09:39 25 entities" -- that's a defined term, Your Honor, to include

09:39 1 the law firm -- "including any Microsoft Dynamics NAV,  
09:39 2 QuickBooks, or other electronic accounting data, files, or  
09:39 3 records" (G) -- I am going to shortcut it -- relating to any  
09:39 4 financial transactions, including any proposed or potential  
09:39 5 financial transactions, including any of the subject  
09:39 6 entities and/or Avenatti.

09:39 7 If you fast-forward to letter (P) on page 9 of  
09:39 8 330, this is even more specific. Paragraph P requires the  
09:40 9 "search for documents, records, applications, materials  
09:40 10 relating to attorneys' fees or costs, and client billing  
09:40 11 records."

09:40 12 If you go on to letter T on page 10 of 330:  
09:40 13 "Records, documents, programs, applications, or materials  
09:40 14 from April 1st, 2011, to March 25, 2019, relating to  
09:40 15 Avenatti and/or EA LLP's representation of Client 1,  
09:40 16 including the approximately \$4 million settlement payment."

09:41 17 If you go to U immediately underneath that, same  
09:41 18 thing relating to Client 2.

09:41 19 If you go to W, same thing as it relates to Client  
09:41 20 3.

09:41 21 So there is no question that this data was seized.  
09:41 22 It was on our forensic copies. If it wasn't seized,  
09:41 23 Mr. Varani could not have accessed it yesterday and provided  
09:41 24 the data to the defense. There is no question it was  
09:41 25 seized.

09:41 1 Your Honor, they didn't leave the box behind in  
09:41 2 the attic. They took all of the boxes out of the attic, and  
09:41 3 they've been in the possession of the government -- the  
09:41 4 boxes from the attic -- for years.

09:41 5 There is discussion about what was made available  
09:41 6 by way of the virtual server, Your Honor. All of the data  
09:42 7 from Tabs and QuickBooks was not made available by way of  
09:42 8 the virtual server two years ago or in September/October of  
09:42 9 2019.

09:42 10 On one occasion a certain e-mail was made  
09:42 11 available for us to review. And, in fact, we know all the  
09:42 12 data wasn't made available because the data from Mr. Varani  
09:42 13 came from the forensic copies held in Washington, D.C. We  
09:42 14 didn't have access to the forensic copies.

09:42 15 But putting aside the issue of access, as Your  
09:42 16 Honor rightfully noted, access does not relieve the  
09:42 17 government of its affirmative obligation to seek out  
09:42 18 exculpatory information or information favorable to the  
09:42 19 defense and to provide it to the defense. It also doesn't  
09:42 20 relieve the government from its obligations under your  
09:42 21 January 2021 order, which could not have been more clear.

09:43 22 There is discussion by Mr. Sagel about what this  
09:43 23 data shows and what it doesn't show, and I'm happy to get  
09:43 24 into some of those details, although our review continues.  
09:43 25 There is no question this data was relevant even under his

09:43 1 theory, and that was specifically one of the things that was  
09:43 2 ordered by Your Honor to be produced in January of 2021,  
09:43 3 relevant information.

09:43 4 As Your Honor rightfully noted in one of Your  
09:43 5 Honor's questions, even if it didn't show any differences,  
09:43 6 it would still be relevant. Your Honor also rightfully  
09:43 7 noted the existence now of data relating to Ms. Gardner in  
09:43 8 Tabs.

09:43 9 Whether the data is the same or not -- and I  
09:43 10 submit that it's not. Whether it's the same or not is of no  
09:43 11 consequence. The issue we now have is that there was  
09:43 12 evidence put before the jury that there was no Tabs data for  
09:44 13 Gardner. There was never any Tabs data for Gardner. We now  
09:44 14 know that that's not accurate.

09:44 15 The printouts that the government provided the  
09:44 16 defense last night, Your Honor, are not complete. They do  
09:44 17 not contain all of the data for the clients in the  
09:44 18 Indictment. There are unallocated costs within Tabs. There  
09:44 19 are other reports in Tabs. There's other information even  
09:44 20 in the short period of time that I was able to review the  
09:44 21 information last night that casts serious doubt as to the  
09:44 22 printouts by the government.

09:45 23 The information that was provided by way of the  
09:45 24 Tabs data and likely the QuickBooks data goes directly to  
09:45 25 motive and intent, Your Honor, among other things. While it

09:45 1 might be true that I in my opening statement referenced the  
09:45 2 calculations on the chart and talked about what was  
09:45 3 required, I'm perplexed as to how that helps the government.

09:45 4 If the government was aware by way of my opening  
09:45 5 statement that that was my defense, to the extent that they  
09:45 6 did not understand the importance of that cost data, the  
09:45 7 Tabs data and the QuickBooks data, they were certainly on  
09:45 8 notice at that point in time. And yet they did nothing to  
09:45 9 look for the data. They did nothing to produce it to the  
09:45 10 defense.

09:45 11 They obviously knew the importance of the Tabs  
09:45 12 data because they had Mr. Drum rely on the two exhibits, one  
09:45 13 from Mr. Barela and one from Mr. Johnson. They were on  
09:46 14 notice from Ms. Regnier of the importance of the Tabs data  
09:46 15 and the information.

09:46 16 Lastly, let me make this point, Your Honor -- and  
09:46 17 we have another pending filing relating to this issue.  
09:46 18 There is no question that when the Prosecution Team believed  
09:46 19 a document existed on those servers or within the  
09:46 20 information seized that was in the possession of the  
09:46 21 Privilege Review Team -- there is no question that they had  
09:46 22 the ability to and in fact did reach out to the Privilege  
09:46 23 Review Team and inquire as to where A, B, C, D, or E was.  
09:46 24 That's how Mr. Andre -- we put this in our reply. That's  
09:46 25 how Mr. Andre was able to represent to the Court that a

09:46 1 QuickBooks file was on its way to be produced. He would not  
09:46 2 have known that but for communication with the Privilege  
09:46 3 Review Team as to that fact because clearly the government  
09:47 4 wanted the QuickBooks files produced.

09:47 5 About a month or two before the trial, Your Honor,  
09:47 6 we had not heard from Mr. Fitzgerald in some time, and the  
09:47 7 defense received notification from Mr. Fitzgerald that all  
09:47 8 of a sudden the Privilege Review Team was getting ready to  
09:47 9 produce to the Prosecution Team about 20 or 25 documents  
09:47 10 that had not been previously produced.

09:47 11 We were puzzled by this because we had not heard  
09:47 12 from the Privilege Review Team in some time, and it seemed  
09:47 13 odd to us that just out of the blue the Privilege Review  
09:47 14 Team would have located these 20 to 25 documents to produce  
09:47 15 to the Prosecution Team.

09:47 16 Upon review of the documents, Your Honor, we  
09:47 17 discovered that they were relevant, and it told us that the  
09:47 18 prosecution wanted to use the documents in the trial.  
09:47 19 That's why all of a sudden they were being produced to the  
09:48 20 Prosecution Team. Now, I don't know if that's the case or  
09:48 21 not, but there's strong evidence to suggest that it was.

09:48 22 **And the one thing that you haven't heard here**  
09:48 23 **today, Your Honor, and the one thing that you've never**  
09:48 24 **heard, the representation that's never been made by either**  
09:48 25 **Mr. Sagel, Mr. Wyman, Mr. Andre prior, or by**

09:48 1 Mr. Fitzgerald -- the one thing the Court has never heard is  
09:48 2 that the Prosecution Team was not in regular contact with  
09:48 3 the Privilege Review Team for the purpose of gaining  
09:48 4 documents and information that they thought would help their  
09:48 5 case. That representation has never been made, and I would  
09:48 6 submit, Your Honor, it never will be made, because the fact  
09:48 7 of the matter is that the Privilege Review Team has worked  
09:48 8 closely with the government when it benefited the government  
09:48 9 as it related to preparation for trial.

09:48 10 The prejudice associated with this information not  
09:48 11 being produced is extraordinary. Your Honor touched on that  
09:49 12 through some of your questioning. I should have had the  
09:49 13 benefit of this information. I should have been able to use  
09:49 14 it in cross-examination and otherwise. And details matter.

09:49 15 I should have been able to use the lack of taking  
09:49 16 into account various costs and even post-settlement  
09:49 17 payments, Your Honor. The \$37,000 payment I think was made  
09:49 18 within a few months of the settlement. Who's to say that  
09:49 19 wasn't associated with the settlement? It's not some minor  
09:49 20 \$1,900 payment. It's a significant payment. I should have  
09:49 21 been able to cross-examine Mr. Drum with the benefit of  
09:49 22 that. I should have had the data. I wasn't provided the  
09:49 23 data.

09:49 24 Even when I complained about it, I was repeatedly  
09:49 25 told that I had everything when they knew I did not have



09:49 1 everything. They knew I didn't have the Tabs data.

09:50 2 **For each of those reasons, Your Honor, I would ask**  
09:50 3 **that the Court grant the defense motion at 706. I'm happy**  
09:50 4 **to answer any other questions.**

09:50 5 THE COURT: No. Thank you.

09:50 6 MR. FITZGERALD: Your Honor, may I address the  
09:50 7 Court?

09:50 8 THE COURT: Sir, he gets the last word.

09:50 9 MR. FITZGERALD: But he made representations about  
09:50 10 the 25 documents.

09:50 11 THE COURT: The moving party gets the last word.

09:50 12 I want to review the facts in the case as I see  
09:50 13 them before setting out my ruling.

09:50 14 First of all, financial data is critical to this  
09:50 15 case. I don't believe the government disputes that,  
09:50 16 although the government suggests that there may be other  
09:50 17 critical data. But if one looks to Mr. Drum's charts,  
09:50 18 particularly 430 through 457 that sum up the case, those  
09:50 19 charts are based almost exclusively on financial data.

09:51 20 Second, the government was on notice, as  
09:51 21 Mr. Avenatti pointed out, for some time of the existence of  
09:51 22 Tabs data. In a July 25, 2019, interview with Ms. Regnier,  
09:51 23 the government learned of the Tabs data. The notes of  
09:51 24 Special Agent Karlous indicate that it relates to billing  
09:51 25 and accounting. That particular handwritten memo is

09:51 1 attached to Defense 1084.

09:51 2 Of more significance I think is the interview with  
09:52 3 Ms. Regnier on November 19, 2019. The report of that  
09:52 4 interview was Defendant's Exhibit 1085. At paragraph 14,  
09:52 5 Ms. Regnier indicated -- I will quote the paragraph -- not  
09:52 6 her quote but a quote from the report: "EA used two systems  
09:52 7 to track case expenses. The first is QuickBooks, and the  
09:52 8 accounting entries came from expense reports, et cetera.  
09:52 9 The second system used by EA to track case expenses is  
09:52 10 Tabs."

09:52 11 I believe that between those two interviews the  
09:52 12 government was fully on notice of the significance of the  
09:52 13 Tabs data. The questioning at trial I believe established  
09:53 14 that no effort was made to secure the Tabs data. On  
09:53 15 August 18, the morning session at page 40 provides the  
09:53 16 following. The question was being put to Agent Karlous:

09:53 17 "Q As you sit here today two years after being  
09:53 18 told in a conference call with other members of  
09:53 19 the investigative team about the Tabs data -- as  
09:53 20 you sit here today, do you recall a single thing  
09:53 21 that you or anyone else did to confirm or deny the  
09:53 22 existence of the Tabs data on the servers?

09:54 23 "A I don't know if we have Tabs data."

09:54 24 Then it continues over on page 41:

09:54 25 "Q Okay. Well, in light of your answer, have

09:54 1 you personally -- let me ask you this. Are you  
09:54 2 aware of anyone on the investigative team in the  
09:54 3 last two years making inquiry as to whether the  
09:54 4 Tabs data was included within the forensic images  
09:54 5 on the servers?

09:54 6 "A It may have occurred, but I don't know."

09:54 7 Similar questioning was conducted the next day of  
09:54 8 Agent Tashchyan. It was apparent from their testimony that  
09:54 9 no one had gone back to the forensic copies of the servers  
09:54 10 to conduct a search.

09:54 11 I think the significance of the Tabs data was  
09:54 12 pointed out early in the trial when Ms. Regnier testified on  
09:55 13 the morning session on July 28 at page 93:

09:55 14 "Q When you had to figure out costs for a  
09:55 15 case, you would look at Tabs; would you not?

09:55 16 "A No. I would look at both Tabs and  
09:55 17 QuickBooks.

09:55 18 "Q Why would you look at both QuickBooks and  
09:55 19 Tabs?

09:55 20 "A To make sure we had encompassed all the  
09:55 21 costs.

09:55 22 "Q You couldn't rely on just one? You had to  
09:55 23 look at both?

09:55 24 "A Yes.

09:55 25 "Q Otherwise the calculation could be wrong?

09:55 1 "A Correct."

09:55 2 I think that testimony in and of itself is  
09:55 3 sufficient to establish the materiality of the Tabs data,  
09:55 4 particularly where at least in the case of three of the  
09:55 5 victim clients the costs were an element in determining what  
09:55 6 net payment Mr. Avenatti was entitled to out of the  
09:56 7 settlement.

09:56 8 The Prosecution Team conducted a search of its  
09:56 9 files and provided the Court an extensive filing at Docket  
09:56 10 737 of various pieces of Tabs data. Two of the reports were  
09:56 11 identical to the trial exhibits, Exhibit 48, the Johnson  
09:57 12 draft, and Exhibit 174, the Barela Tabs data.

09:57 13 All the other Tabs documents related to other  
09:57 14 clients and really aren't material to this case. It shows  
09:57 15 that the government did a diligent search for Tabs data in  
09:57 16 the materials that the Prosecution Team had, but it by no  
09:57 17 means convinced the Court that that was the only Tabs data  
09:57 18 that was out there to be had in the materials which were  
09:57 19 seized.

09:57 20 Tabs data wasn't used at trial, as I indicated,  
09:57 21 Tabs data offered for proving up the Johnson loss, and  
09:58 22 similarly for Barela. No Tabs data was had for Gardner. I  
09:58 23 think that it's significant that the prosecution didn't have  
09:58 24 the benefit of other Tabs data relating to those two clients  
09:58 25 and relating to Gardner for whom no Tabs data was offered.

09:58 1 I also think Tabs data would have been of  
09:58 2 assistance to the government even with respect to the two  
09:58 3 other victims, Tran and Phan.

09:58 4 MR. AVENATTI: Your Honor, you said "government"  
09:58 5 the last two times. Was that purposeful, or did you mean to  
09:58 6 say the "defense"?

09:58 7 THE COURT: I meant to say the defense.

09:58 8 MR. AVENATTI: I'm sorry to interrupt.

09:58 9 THE COURT: Thank you for the correction.

09:58 10 **The documents would have been of assistance to the**  
09:58 11 **defense in questioning the appropriate amount that**  
09:58 12 **Mr. Avenatti drew down for himself, even though with respect**  
09:58 13 **to Tran and Phan, no costs were relevant because their fee**  
09:59 14 **contracts simply provided for a straight net percentage out**  
09:59 15 **of the amounts recovered.**

09:59 16 I believe that the data would have been useful in  
09:59 17 an overall showing that the government's accounting records,  
09:59 18 the methods of Mr. Drum in particular, weren't accurate. He  
09:59 19 wasn't accurate in part of his analysis. I think the jury  
09:59 20 could question the accuracy of his methods and results with  
09:59 21 respect to other clients.

09:59 22 It is no answer that the government is not  
09:59 23 required to prove the exact amount that Mr. Avenatti  
09:59 24 misappropriated. The government put forth a number, and I  
09:59 25 believe the defendant was entitled to challenge that number

09:59 1 and to show that it was not accurate. It may have shown  
09:59 2 that the amount was appropriated was lesser or greater, or  
10:00 3 it would have put a question mark there, and I think the  
10:00 4 defendant was entitled to have the ability to put that  
10:00 5 question mark there.

10:00 6 I think the testimony -- the factual presentations  
10:00 7 this morning indicate to me that out of the identified Tabs  
10:00 8 material it would likely have been relevant material to  
10:00 9 assist the defense in its cross-examination.

10:00 10 Mr. Fitzgerald indicated to me that if the  
10:00 11 additional materials for Tabs and QuickBooks were identified  
10:00 12 as part of the initial process of screening the search  
10:00 13 warrant materials, he would have reviewed these materials,  
10:00 14 and if anything were relevant, he would have passed them on  
10:00 15 to the Prosecution Team. We'll never know the answer to  
10:00 16 that question because it didn't occur. It seems to me given  
10:00 17 the volume of Tabs and the representations I have received  
10:00 18 from the defense this morning that there would have been at  
10:01 19 least some data passed on.

10:01 20 The question then is is there a violation of  
10:01 21 Brady? I focus on Brady because I think the analysis of  
10:01 22 Brady is sufficient, even though there may be other grounds  
10:01 23 which would call for the government's production of  
10:01 24 materials from the Tabs data at least be identified.

10:01 25 Brady versus Maryland, 373 U.S. 83-87 (1963),

1 requires production of materials that are advantageous to  
2 the defendant or that tend to call into doubt -- call the  
3 government's case into doubt.

4 Brady establishes three requirements: One, the  
5 evidence at issue must be favorable to the accused. I find  
6 that the Tabs and other accounting data that was not  
7 produced would have been favorable to the defendant.

8 Two, the evidence must have been suppressed by the  
9 government willfully or inadvertently. I find that it was,  
10 quote, "suppressed," although I don't think that's the  
11 appropriate word in the context. But it wasn't produced  
12 through inadvertence and a failure to appreciate what was  
13 there.

14 I find no willful conduct on the part of the  
15 Prosecution Team. I find no willful conduct on the part of  
16 the Privilege Review Team. I think the Taint Team has  
17 fairly acknowledged that there may have been some  
18 shortcomings in the review process.

19 Finally, there must be a finding that prejudice  
20 must have ensued. I find that prejudice occurred here in a  
21 number of ways. I think the defendant was denied an  
22 opportunity to craft his overall theory of the case and  
23 presentation, including the opening statement, by not having  
24 this additional material. I believe that the defense was  
25 prejudiced in its ability to cross-examine certain

1 witnesses, in particular, Mr. Drum.

2 At page 5 of his most recent report at Docket 775,  
3 Mr. Avenatti outlines a number of things that he could have  
4 done had he had the Tabs information, including  
5 cross-examination of certain witnesses, ability to question  
6 the government's preparation techniques generally, and so  
7 on. I won't repeat those.

8 The question is what remedy should I adopt? I do  
9 not believe that an adjournment is an appropriate remedy.  
10 First of all, an adjournment would not solve the problem  
11 that Mr. Avenatti didn't have this material at the front end  
12 to craft his theory of the case, his opening statement, and  
13 examining of the witnesses. He might have done something  
14 different, or he might not have done something different if  
15 he had this data. The point is he didn't have the  
16 opportunity to make that choice.

17 I believe that any adjournment wouldn't be a  
18 short-lived affair but would require a significant amount of  
19 time (a) to complete the production to the defendant of the  
20 newly described materials and then allow the defendant  
21 adequate time to assimilate and craft a strategy based on  
22 the newly produced material. I am not prepared to say that  
23 that would be a short-lived effort. Given the volume of new  
24 material, it seems unlikely that effort would be  
25 short-lived.



10:05 1 The representation to the jury was our best  
10:05 2 estimate the case would be concluded by August 20.  
10:05 3 Obviously, we are past that date, and the defense is still  
10:05 4 on the defense's case-in-chief. I do not believe it would  
10:05 5 be appropriate to hold the jury for an extended period of  
10:05 6 time to allow the defense adequate time to assimilate and  
10:05 7 prepare in light of the newly produced material.

10:06 8 I want to go back and emphasize two points. I  
10:06 9 repeat my findings that I find no misconduct on the part of  
10:06 10 the Prosecution Team and no misconduct on the part of the  
10:06 11 Taint Team. Shortcomings there may have been, but I find no  
10:06 12 misconduct, intentional or otherwise, on the part of the  
10:06 13 Taint Team in carrying out its activity.

10:06 14 For all those reasons, I grant a new trial. The  
10:06 15 matter will proceed to trial on October 12, 2021, at 8:30  
10:06 16 a.m. That's the current date that we ought to have in place  
10:06 17 our severed portion of the case. I set a status conference  
10:06 18 for September 27, 2021, at 9:00 a.m. I set a further  
10:07 19 interim status conference for September 2 at 8:30 a.m. to  
10:07 20 discuss the overall timing of the case.

10:07 21 In terms of a retrial, you should be aware that I  
10:07 22 will be away from October 17th to October 24th. If we  
10:07 23 proceed on October 12th on the victim counts, we could  
10:07 24 impanel a jury I believe the week before I leave and then  
10:07 25 start the trial probably the week I come back. I want to

10:07 1 give the parties an opportunity to assimilate the schedule  
10:07 2 that I have put out there and come back to me with their  
10:07 3 thoughts. That's what we will do on September 2.

10:07 4 All pending motions are denied or moot at this  
10:07 5 time.

10:07 6 **Anything further?**

10:08 7 MR. AVENATTI: Your Honor, from the defense, I  
10:08 8 believe that the Motion for Mistrial should be with  
10:08 9 prejudice. I have heard Your Honor's directives this  
10:08 10 morning, but I would like to have an opportunity to at least  
10:08 11 submit briefing for consideration by the Court on that point  
10:08 12 once I have had a chance to look at some of the data. So  
10:08 13 what I would like to do is collect my thoughts and then  
10:08 14 propose a briefing schedule to the government and to the  
10:08 15 Court.

10:08 16 THE COURT: That's fine. I think we would like to  
10:08 17 resolve that issue. The strong presumption is that when a  
10:08 18 mistrial is granted at the request of the defendant, the  
10:08 19 grant of a new trial is proper. But I will afford you an  
10:08 20 opportunity to move for whatever relief you want. I don't  
10:08 21 think we should do it on an expedited basis, but we  
10:08 22 shouldn't drag it out either.

10:08 23 MR. AVENATTI: I agree, Your Honor. I'm going to  
10:08 24 need some time to look at the data, but I agree that it's  
10:09 25 going to have to be dealt with on a measured approach.

10:09 1 THE COURT: Anything further from the government?

10:09 2 MR. SAGEL: No, Your Honor.

10:09 3 THE COURT: Okay, we will be adjourned. Thank  
10:09 4 you.

10:09 5 MR. AVENATTI: Your Honor, are you bringing the  
10:09 6 jurors in? Are they here?

10:09 7 THE COURT: No, they're not here. I plan to send  
10:09 8 them the usual certificate for service, and I plan to send  
10:09 9 each one a personal letter indicating that I concluded the  
10:09 10 trial and thanking them for their service.

10:09 11 MR. AVENATTI: Understood.

10:09 12 THE COURT: I'm not going to get into the merits  
10:09 13 of anything. They put in a significant amount of time, and  
10:09 14 I watched these folks. By and large, they were on time  
10:09 15 every day. They were diligent. They were watching what was  
10:09 16 going on. I think that the parties' efforts to help the  
10:09 17 Court in seating a fair and impartial jury were achieved.  
10:09 18 They were diligent, and they should be told that.

10:10 19 Thank you.

10:10 20 **(Whereupon, the proceedings were concluded.)**

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**CERTIFICATE**

I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
correct transcript of the stenographically reported  
proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the  
regulations of the Judicial Conference of the United States.

Date: August 25, 2021

/s/ Sharon A. Seffens 8/25/21

SHARON A. SEFFENS, U.S. COURT REPORTER

SHARON A. SEFFENS, U.S. DISTRICT COURT REPORTER

<p><b>MR. AVENATTI:</b> [25] 3/11 6/19 7/1 8/18 9/12 9/15 10/13 11/19 13/1 13/20 15/25 16/10 18/15 19/4 20/1 20/14 41/14 48/23 48/25 60/4 60/8 65/7 65/23 66/5 66/11</p> <p><b>MR. FITZGERALD:</b> [11] 3/18 3/25 41/3 41/23 42/4 44/14 46/12 46/17 46/25 56/6 56/9</p> <p><b>MR. SAGEL:</b> [35] 3/5 21/5 21/13 21/25 22/14 22/19 23/5 23/17 23/25 24/2 24/18 24/25 25/15 26/7 26/12 27/5 27/17 27/22 28/2 28/8 28/23 28/25 30/5 30/9 30/13 32/16 33/17 36/5 37/7 37/11 39/2 40/13 40/19 40/25 66/2</p> <p><b>THE CLERK:</b> [1] 3/3</p> <p><b>THE COURT:</b> [67] 3/10 3/13 3/24 6/17 6/24 8/17 9/2 9/14 10/12 11/18 12/24 13/17 15/24 16/6 18/13 19/2 19/25 20/8 21/2 21/7 21/22 22/9 22/16 23/2 23/8 23/21 24/1 24/13 24/23 25/11 25/16 26/9 27/1 27/10 27/19 27/24 28/7 28/16 28/24 30/2 30/7 30/10 32/14 33/15 37/3 40/12 40/14 40/23 41/1 41/21 42/3 44/10 46/5 46/15 46/18 48/3 48/24 56/5 56/8 56/11 60/7 60/9 65/16 66/1 66/3 66/7 66/12</p> <p><b>\$</b></p> <p><b>\$1,810,000</b> [1] 34/5</p> <p><b>\$1,900</b> [2] 29/13 55/20</p> <p><b>\$1,910,000</b> [1] 34/5</p> <p><b>\$111,113.22</b> [2] 31/12 31/13</p> <p><b>\$27,000</b> [1] 29/16</p> <p><b>\$37,000</b> [2] 29/16 55/17</p> <p><b>\$4</b> [2] 21/19 50/16</p> <p><b>\$4 million</b> [2] 21/19 50/16</p> <p><b>\$900</b> [1] 33/9</p> <p><b>\$944</b> [1] 33/7</p> <p><b>'</b></p> <p><b>'10</b> [1] 30/25</p> <p><b>'11</b> [1] 30/25</p> <p><b>/</b></p> <p><b>/s</b> [1] 67/15</p> <p><b>0</b></p> <p><b>00418</b> [1] 49/6</p> <p><b>0870</b> [1] 1/21</p> <p><b>1</b></p> <p><b>1-1053</b> [1] 1/20</p> <p><b>10</b> [1] 50/12</p> <p><b>1019</b> [1] 17/17</p> <p><b>1053</b> [1] 1/20</p> <p><b>107</b> [1] 2/16</p> <p><b>1084</b> [3] 11/18 11/19 57/1</p> <p><b>1085</b> [3] 12/25 13/1 57/4</p> <p><b>1100</b> [1] 2/7</p> <p><b>12</b> [3] 4/14 7/15 64/15</p> <p><b>12/19/2017</b> [1] 31/9</p> <p><b>12th</b> [3] 17/1 24/8 64/23</p> <p><b>14</b> [4] 4/14 7/15 13/2 57/4</p> <p><b>16</b> [3] 10/3 17/11 18/8</p> <p><b>17</b> [2] 5/24 6/1</p> <p><b>174</b> [6] 15/21 15/22 16/18 31/8 31/8 59/12</p> <p><b>17th</b> [1] 64/22</p> <p><b>18</b> [1] 57/15</p> <p><b>19</b> [2] 12/21 57/3</p> <p><b>193</b> [3] 31/8 31/10 31/13</p> <p><b>1963</b> [1] 61/25</p> <p><b>1st</b> [1] 50/14</p> <p><b>2</b></p> <p><b>20</b> [3] 54/9 54/14 64/2</p> <p><b>2011</b> [2] 49/23 50/14</p> <p><b>2012</b> [1] 30/25</p> <p><b>2015</b> [2] 30/21 31/1</p> <p><b>2017</b> [1] 31/9</p> <p><b>2019</b> [24] 5/7 6/2 9/21 10/2 10/2 10/8 10/14 11/3 11/16 12/6 12/21 25/18 34/12 37/20 44/8 44/20 44/20 47/7 49/11 49/23 50/14 51/9 56/22 57/3</p>	<p><b>2020</b> [5] 14/8 17/18 35/7 35/13 37/20</p> <p><b>2021</b> [7] 1/1 3/1 5/7 12/2 24/45 34/18 67/13</p> <p><b>21</b> [1] 67/15</p> <p><b>213</b> [1] 2/8</p> <p><b>24</b> [2] 1/17 3/1</p> <p><b>24th</b> [4] 10/8 10/14 11/3 64/22</p> <p><b>25</b> [7] 49/23 50/14 54/9 54/14 56/10 56/22 67/13</p> <p><b>25th</b> [5] 6/2 9/21 11/16 12/6 14/18</p> <p><b>26</b> [1] 1/12</p> <p><b>27</b> [1] 64/18</p> <p><b>28</b> [2] 58/13 67/7</p> <p><b>3</b></p> <p><b>312</b> [1] 2/7</p> <p><b>31st</b> [1] 5/7</p> <p><b>330</b> [3] 49/21 50/8 50/12</p> <p><b>338-3598</b> [1] 2/12</p> <p><b>3598</b> [1] 2/12</p> <p><b>36</b> [1] 41/25</p> <p><b>373</b> [1] 61/25</p> <p><b>3rd</b> [1] 30/21</p> <p><b>4</b></p> <p><b>4-1</b> [1] 49/6</p> <p><b>40</b> [1] 57/15</p> <p><b>400,000</b> [1] 34/18</p> <p><b>408</b> [1] 14/19</p> <p><b>41</b> [1] 57/24</p> <p><b>411</b> [2] 1/20 2/11</p> <p><b>430</b> [2] 21/8 56/18</p> <p><b>457</b> [3] 21/9 21/9 56/18</p> <p><b>48</b> [5] 15/21 15/22 16/18 28/8 59/11</p> <p><b>481-4900</b> [1] 2/17</p> <p><b>4900</b> [1] 2/17</p> <p><b>4:00 last</b> [1] 8/20</p> <p><b>4th</b> [4] 1/20 25/17 30/21 31/1</p> <p><b>5</b></p> <p><b>543-0870</b> [1] 1/21</p> <p><b>5th</b> [1] 29/2</p> <p><b>6</b></p> <p><b>6,000</b> [2] 38/20 38/23</p> <p><b>6683</b> [1] 2/8</p> <p><b>6:00 p.m</b> [2] 4/16 7/16</p> <p><b>7</b></p> <p><b>706</b> [6] 9/6 9/9 19/17 19/21 20/25 56/3</p> <p><b>714</b> [2] 1/21 2/12</p> <p><b>72</b> [1] 25/11</p> <p><b>737</b> [2] 24/15 59/10</p> <p><b>74</b> [1] 5/6</p> <p><b>745</b> [2] 10/6 10/10</p> <p><b>753</b> [1] 67/6</p> <p><b>775</b> [2] 3/16 63/2</p> <p><b>8</b></p> <p><b>8/25/21</b> [1] 67/15</p> <p><b>8000</b> [1] 2/11</p> <p><b>83-87</b> [1] 61/25</p> <p><b>87</b> [1] 61/25</p> <p><b>894-6683</b> [1] 2/8</p> <p><b>8:05</b> [1] 3/1</p> <p><b>8:19-MJ-00418</b> [1] 49/6</p> <p><b>8:30</b> [1] 64/15</p> <p><b>8:30 a.m</b> [1] 64/19</p> <p><b>9</b></p> <p><b>90012</b> [1] 2/8</p> <p><b>92672</b> [1] 2/16</p> <p><b>92701</b> [2] 1/20 2/11</p> <p><b>93</b> [1] 58/13</p> <p><b>949</b> [1] 2/17</p> <p><b>968</b> [1] 17/17</p> <p><b>9:00</b> [1] 64/18</p> <p><b>9:25</b> [1] 48/5</p> <p><b>9:36</b> [1] 48/6</p>	<p><b>A</b></p> <p><b>a.m</b> [6] 3/1 48/5 48/6 64/16 64/18 64/19</p> <p><b>abandon</b> [1] 18/7</p> <p><b>ability</b> [4] 53/22 61/4 62/25 63/5</p> <p><b>able</b> [16] 4/9 4/13 8/19 17/11 18/17 22/2 26/21 36/14 38/13 38/17 43/24 52/20 53/25 55/13 55/15 55/21</p> <p><b>about</b> [35] 4/15 4/15 9/24 14/24 15/11 15/20 20/18 24/2 24/3 24/7 26/6 28/23 31/2 32/3 35/2 38/3 38/12 41/18 42/6 43/7 43/14 44/1 45/25 47/6 47/16 47/22 48/3 51/5 51/22 53/2 54/5 54/9 55/24 56/9 57/19</p> <p><b>above</b> [1] 67/9</p> <p><b>above-entitled</b> [1] 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11/21 11/22 12/21 12/22 16/22 38/11 49/11 56/24 57/16 58/8</p> <p><b>agents</b> [5] 42/19 43/6 43/10 47/10 47/21</p> <p><b>ago</b> [5] 11/4 19/8 24/20 46/1 51/8</p> <p><b>agree</b> [8] 13/24 19/25 21/3 30/5 36/24 41/21 65/23 65/24</p> <p><b>agreed</b> [5] 5/2 5/19 7/1 8/6 23/24</p> <p><b>agreements</b> [2] 3/22 4/20</p> <p><b>agrees</b> [1] 6/20</p> <p><b>ahead</b> [1] 24/1</p> <p><b>ALEXANDER</b> [2] 2/5 3/6</p>
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<p><b>A</b></p> <p><b>all</b> [52] 4/11 5/1 5/8 7/6 7/25 10/3 11/14 12/3 12/14 14/1 14/3 14/6 14/16 14/20 15/2 15/8 16/23 18/18 20/24 22/10 24/14 27/17 29/3 29/10 30/14 30/22 32/18 33/7 34/25 35/3 35/10 36/18 38/14 38/16 38/18 40/9 41/10 45/11 46/5 46/13 51/2 51/6 51/11 52/17 54/7 54/19 56/14 58/20 59/13 63/10 64/14 65/4</p> <p><b>allegedly</b> [1] 20/10</p> <p><b>allow</b> [2] 63/20 64/6</p> <p><b>allowed</b> [4] 4/21 6/13 23/10 42/19</p> <p><b>allowing</b> [1] 33/19</p> <p><b>almost</b> [2] 21/11 56/19</p> <p><b>along</b> [2] 33/13 35/6</p> <p><b>already</b> [2] 14/11 32/10</p> <p><b>also</b> [9] 24/18 26/17 26/20 32/13 35/23 42/11 51/19 52/6 60/1</p> <p><b>alternative</b> [1] 26/20</p> <p><b>alternatively</b> [1] 28/21</p> <p><b>although</b> [3] 51/24 56/16 62/10</p> <p><b>always</b> [1] 39/15</p> <p><b>am</b> [5] 27/8 33/18 36/25 50/3 63/22</p> <p><b>AMERICA</b> [2] 1/9 3/4</p> <p><b>among</b> [1] 52/25</p> <p><b>amount</b> [11] 7/13 9/16 9/17 13/9 13/10 28/14 60/11 60/23 61/2 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